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**NOTICE OF PROPOSED REVISION OF REGULATIONS
AND STATEMENT OF REASONS**

California Code of Regulations

Title 2. Administration

Division 5. Local Agency Personnel Standards

Chapter 2. Merit System Regulations

Article 5. Certification

Article 6. Appointments, Transfers and Nonpunitive Separations and Demotions

Subarticle 4. Reduction in Force

DATE: August 19, 2008

TO: ALL INTERESTED PARTIES

**SUBJECT: PROPOSED AMENDMENTS TO REGULATIONS CONCERNING
NUMBER OF ELIGIBLES ON A LOCAL AGENCY CERTIFICATION
LIST**

AUTHORITY:

Under authority established in Government Code (GC) sections 18701 and 19800, the State Personnel Board (SPB or Board) proposes to amend Title 2 of the California Code of Regulations (2 CCR), sections 17463, 17470, and 17519, which provides for procedures utilized by the SPB for the establishment of Eligible Lists utilized by local agencies. Pursuant to GC sections 18211 and 18213, these regulations are exempt from the Administrative Procedures Act (Chapter 3.5, commencing with Section 11340, of Part 1 of Division 3).

REFERENCE:

These regulations are amended to implement, interpret, and/or make specific GC sections 19800 and 19803.

PUBLIC HEARING:

Date and Time: November 3, 2008, from 9:45 a.m. – 10:15 a.m.

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Place: State Personnel Board
First Floor Auditorium
801 Capitol Mall
Sacramento, CA 95814

Purpose: To receive written and/or oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, October 13 2008, at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

Bruce A. Monfross, Staff Counsel IV
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: bmonfross@spb.ca.gov or faxed to his attention at: (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available for review upon request to Bruce Monfross. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross, as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Bruce Monfross at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1456 or TDD (916) 653-1498.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulations available for at least 15 days before the date the regulations are permanently amended.

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INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC section 19800 vests with the SPB jurisdiction and responsibility of establishing and maintaining personnel standards on a merit basis and administering merit systems for local government agencies where such merit systems of employment are required by statute as a condition of a state-funded program or a federal grant-in-aid program established under the following federal laws: Social Security Act, as amended; the Public Health Service Act; and the Federal Civil Defense Act, as amended.

GC section 19803 requires the SPB, by regulation, to establish and maintain personnel standards on a merit basis for local agencies (including therein standards of qualifications, competency, education, experience, tenure, and compensation) necessary for proper and efficient administration, and to assure state conformity with applicable federal requirements, for the purposes of administration of state or federally supported programs under Section 19800.

GC section 19803 provides that the merit system for employees engaged in administering programs under Section 19800 in a local agency not administering its own merit system approved under Section 19802, shall be administered by the SPB. This may include, but is not limited to, recruitment, examination, certification, appointment and other transactions, position classification, compensation standards, and disciplinary actions. As part of such administration, the SPB shall hear and decide appeals of any applicant for employment or officer or employee from the decision of a local agency or the SPB's executive officer affecting the employment rights of such persons.

2 CCR section 17463 (Order of Eligible Lists), currently specifies that if fewer than five names of persons willing to accept appointment are on a list, additional eligibles shall be certified from the list or lists next in order until five names are certified. This is commonly known as the "Rule of Five."

2 CCR section 17470 (Certification of Names), currently specifies that the SPB's Executive Officer shall certify to the appointing authority the names and addresses of the five persons who stand highest on the Eligible List for the class to which the position belongs and who have indicated a willingness to accept the conditions of employment. The number of names to be certified to the appointing authority shall be on the basis of the number of appointments to be made plus four, except that when the score for the last certifiable name on an Eligible List is the same as one or more scores following it, all names having that same score shall be certified

2 CCR section 17519 (Reemployment Lists from Other Departments Covered by These Regulations), currently specifies that where there exists a reemployment list for the same class for another department covered by these rules in the same local agency,

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the SPB's Executive Officer may require the use of the reemployment list to fill vacancies.

The purpose of the proposed regulations is to change from five to ten the number of eligible persons that may appear on a local agency Certification List. Existing regulations do not provide sufficient numbers of eligible persons to select from for hiring purposes, thereby creating unnecessary duplication of recruitment and selection efforts to identify the best qualified candidates for the hiring department.

As a result, 2 CCR sections 17463, 17470, and 17519 will have to be revised to allow the SPB Executive Officer to provide departments with a certification list containing the names of ten persons rather than five persons. This is commonly known as the "Rule of 10."

IMPACT ON SMALL BUSINESSES:

It is anticipated that the proposed amendments will have no impact on small businesses.

LOCAL MANDATE:

SPB has determined that the proposed action imposes no additional mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulations will involve no additional costs to any state agency. It is anticipated that the proposed regulations will enable Merit agencies to select from ten eligible candidates instead of five for purposes of interviewing and hiring.

Impact on Housing Costs:

No impact.

Costs or Savings in Federal Funding to the State:

No impact.

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Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

No impact.

Cost Impact on Private Persons or Businesses:

No impact.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

No impact.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:

The adoption of the proposed action should neither create nor eliminate jobs in the state, nor result in the elimination or expansion of existing businesses in the state, nor create or expand businesses in the state.

ALTERNATIVES STATEMENT:

SPB has determined that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed, or would be as effective as and less burdensome to affected persons than the proposed action.

FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to GC section 11346.9, and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

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STATEMENT OF REASONS:

2 CCR sections 17463, 17470, and 17519 set forth the maximum number of persons which may be on an Eligible List for hire by a local Interagency Merit Systems department. The number identified when the regulations were developed was five persons.

However, section 17112 (c), which applies to Approved Local Merit System counties and to Interagency Merit System counties, states that appointment procedures may not allow appointment either beyond the top ten eligibles or the top ten percent of eligibles or the top predetermined score group. This guideline is used when conducting audits of Approved Local Merit System counties. The requested change from the “Rule of Five” to the “Rule of Ten” would be in compliance with 17112 (c) and allow the Interagency Merit System counties the same level of choice as the Approved Local Merit System counties.

It has been the experience of several local agencies that a list of five eligible candidates is inadequate to provide Merit System Services’ Departments with sufficient options for personnel selection purposes. Over the years, departments have voiced frustration and concern at the impact of having only five eligible candidates to select from when hiring new staff members.

This restriction of selection hinders departments’ ability to find the candidates who make the best fit for their agency. Oftentimes, the best fit requires a combination of knowledge and skills that is specific to the particular Department. Departmental Eligible Lists often include persons who are “qualified” for the classification, but not a good fit for the Department. By only allowing Departments access to five eligible candidates, it significantly reduces the Departments’ ability to identify the best qualified candidates for their particular needs.

Currently, written and oral examinations for classifications are designed to measure knowledge, skills, and abilities (KSAs) common across all agencies. However, different sized agencies often have differing needs for the same or similarly-titled positions. The size of the Department often drives the specific skill set combination required of positions within that agency. For example, a small, rural Department may need a more broad-based skill set than a large, urban Department for the same position.

The use of screening examinations designed for the generic classification may result in a list of candidates who possess the general required KSAs across Departments, but do not possess the more specific KSAs for a given Department. This lack of specificity puts a greater emphasis on the Departments’ Hiring Interview to screen candidates for the best fit. If a majority of the candidates included on the Eligibility List do not possess the necessary skill set for the position, the result can be highly frustrating and dysfunctional

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and may require a Department to appoint an individual who does not have the knowledge and skills needed to meet the Department's specific needs.

The current "Rule of 5" regulation often results in positions remaining vacant for long periods of time in order for Departments to avoid hiring persons who do not possess the best skill set for the position. Many Departments with varying or restricted candidate pools are plagued by limited selection options and the "Rule of Five" increases that negative impact. Given the stringent background checks and other selection requirements candidates must pass, Departments need more innovative strategies for filling positions. Increasing the CCR's "Rule of Five" to the "Rule of Ten" will provide just such innovation.

MARY FERNANDEZ
Assistant Executive Officer

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Attachment: Proposed Text of Amended Regulations

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Article 5. Certification

§ 17463. Order of Eligible Lists.

As provided in Sections 17518 and 17519, reemployment lists shall take precedence overall other Eligible Lists. In the absence of an appropriate reemployment list, the order of Eligible Lists shall be:

- (a) Departmental promotional list
- (b) Local agency promotional list
- (c) Open lists

If fewer than ~~five~~ ten names of persons willing to accept appointment are on a list, additional eligibles shall be certified from the list or lists next in order until ~~five~~ ten names are certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code

§ 17470. Certification of Names.

When a local agency notifies the State Personnel Board Executive Officer that it anticipates it will have a vacant position, the State Personnel Board Executive Officer shall certify to the appointing authority the names and addresses of the ~~five~~ ten persons who stand highest on the Eligible List for the class to which the position belongs and who have indicated a willingness to accept the conditions of employment.

The number of names to be certified to the appointing authority shall be on the basis of the number of appointments to be made plus ~~four~~ nine, except that when the score for the last certifiable name on an Eligible List is the same as one or more scores following it, all names having that same score shall be certified.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code

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§ 17519. Reemployment Lists from Other Departments Covered by These Regulations.

Where there exists a reemployment list for the same class for another department covered by these rules in the same local agency, the State Personnel Board Executive Officer may require the use of the reemployment list to fill vacancies.

The provisions of Sections 17518(b) and (c) regarding waivers and placement on inactive lists apply. An appointment shall be made from among the highest ~~five~~ ten available eligibles who have expressed a willingness to accept employment. If such a reemployment list has fewer than three names, however, the State Personnel Board Executive Officer may grant authority to make other types of appointments.

Employees appointed under these conditions may be required by the new appointing authority to serve a new probationary period. Such an appointment shall not remove a name from the reemployment list for the department from which the employee was laid off or demoted in lieu of layoff.

NOTE: Authority cited: Section 19803, Government Code. Reference: Section 19800, Government Code.